

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAHARA PACKING COMPANY,)	
)	
Employer,)	No. 76-RC-22-E(R)
)	
and)	
)	3 ALRB No. 39
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner,)	
)	
and)	
)	
WESTERN CONFERENCE OF TEAMSTERS)	
AND AFFILIATED LOCALS,)	
)	
Intervenor.)	
)	

This decision has been delegated to a three-member panel. Labor Code Section 1146.

A representation election was held at Sahara Packing Company on February 6, 1976, with the following results:

Teamsters	36
UFW	32
Challenged Ballots	10
Void Ballots	1

Because the challenges are sufficient in number to affect the results of the election, this matter comes before the Board pursuant to a regional office investigation and recommendation relating to the challenged ballots. 8 Cal. Admin. Code Section 20365 (e) (1975); re-enacted as Section 20365(a) (1976).

Upon a review of the findings set forth in the report, we adopt the regional director's recommendation that eight of the challenges be sustained. The remaining two challenges therefore would not be outcome determinative and need not be resolved.

The eight votes in dispute were cast by persons^{1/} who were challenged by the UFW on the grounds they were not agricultural employees. Labor Code Section 1140.4 (b) ; 8 Cal. Admin. Code Section 20350(b)(4) (1975); re-enacted as Section 20355 (a) (7) (1976) . Their names appeared on a supplemental eligibility roster submitted to the Board by a Sahara representative who, prior to the election, stated that, "The following is a complete list of all drivers, stitchers, and folders from my payroll week ending January 25, 1976." According to the regional director, it was later clarified that the eight employees were paid by Frontier Marketing Cooperative which, at the time of the election and for seven months during 1975, provided Sahara with the following personnel and equipment services: box folders and stitchers who performed their tasks while on truck beds in Sahara's lettuce fields; manpower and equipment to transport harvested commodities from Sahara's growing fields to the coolers.^{2/}

The regional director concluded first that the eight challenged ballots were cast by agricultural employees, and, secondly that Frontier, not Sahara, was their employer. According to the report, the eight employees would not be included within a unit of Sahara employees. Frontier operated as an independent contractor with exclusive control over the eight employees and

^{1/}Three drivers, two driver-stitchers, one stitcher and one folder.

^{2/}The election was ordered in accordance with the unit description offered by the petitioner and which called for a bargaining unit consisting of all employees of the employer excluding off-the-farm packing shed and vacuum cooler plants covered by Local 78-B of the Amalgamated Meat Cutters Union.

it utilized its own or leased trucks and equipment. It was also noted that Frontier contracted for like services with other Imperial Valley growers.

The UFW excepted to both findings. As to the first, the union argued that this Board should await clarification of the status of employees in these and similar categories by the National Labor Relations Board. We agree. See, Interharvest, Inc., 1 ALRB No. 2 (1975). As to the issue of whether Frontier Marketing Cooperative is the employer, it is the union's position that the regional director's finding was premised on an insufficient investigation. However, the UFW failed to submit any facts or evidence which would dispel the director's findings. We therefore uphold the regional director's conclusion that the eight ballots cast by Frontier employees be sustained. The tally of ballots as reported is final.

Both unions filed post-election objections petitions which are still outstanding.

Dated: May 10, 1977

Richard Johnsen, Jr., Member

Robert B. Hutchinson, Member

Ronald L. Ruiz, Member